



Principles for provision of Access to Justice

Preamble

- A. The following principles have been prepared in discussion among the Lord President, the Lord Justice Clerk and the Sheriffs Principal. These set out broad principles to which they require SCS to have regard in making provision of support under ss.61 and 62 of Judiciary and Courts (Scotland) Act 2008 (2008 Act) concerning the places in which courts should be located and court services should be provided. In planning for the future of the court estate, account should be taken of anticipated demands including developments in the practice and procedures of both criminal and civil business and the requirement to consult publicly and seek approval from Parliament for any substantial changes to sheriff and justice of the peace court locations.
- B. These principles should be read together. In certain circumstances one or more of the principles may need to take precedence over another. All of them must be construed within the statutory duty of the Lord President for the efficient disposal of business in the Scottish courts¹, and the responsibility of each Sheriff Principal for the efficient disposal of business in the courts within his or her sheriffdom². In providing services in support of the courts of Scotland, and the judiciary in those courts, SCS cannot be asked to provide services at a cost greater than the resources made available by the Scottish Parliament for that purpose.

Principles

- C. The provision of services by SCS must be compliant with Article 6 of the ECHR: that is to say that it must support the determination of a citizen's rights and obligations or of any criminal charge against him or her by way of a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The manner in which compliance with this Article is achieved is not tied to the number of locations at which SCS provides its services, but it must not do so in a manner that effectively denies to the citizen access to the determination of a right or obligation in civil cases, for example, by reason of excessive cost or the inaccessibility of the venue, or effectively prevents a citizen accused of a criminal charge having a fair trial by reason of, for example, material difficulties in obtaining the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him.

¹ S.2(1) Judiciary and Courts (Scotland) Act 2008 (asp 6)

² s. 15(1) Sheriff Courts (Scotland) Act 1971 (c.58) and s61 Criminal Proceedings etc. (Reform)(Scotland) Act 2007 (asp6)

- D. Subject to the efficient disposal of business, it is desirable that criminal justice be delivered locally. Quite apart from the convenience of witnesses and the interest of victims, this engages the local community in the administration of justice, including providing the opportunity to serve as justices or jurors. What is involved in the delivery of criminal justice 'locally' may vary with the level of the jurisdiction being exercised.
- E. The SCS should ensure that most people will be able to travel to their local court by public transport so as to arrive at the start of the case in which they are concerned, and be able to return home by public transport on the same day. That local court should as a minimum be able to hear and determine summary criminal cases and lower value, or more straightforward, civil matters. Provision of services beyond that minimum will be determined by reference to the statutory duty of the Lord President and the Sheriffs Principal in respect of the efficient disposal of business in a particular area.
- F. Within each courthouse appropriate facilities must be provided for criminal trials, civil proofs or other hearings where the physical presence of parties or witnesses is required. The use of video conferencing (for example in procedural stages of criminal proceedings or interlocutory or preliminary hearings in a civil case) which may avoid the need for parties to be physically present in a courtroom is in appropriate circumstances acceptable. The appropriateness of the use of video conferencing in a particular case must, subject to any rule of law, be a matter for the presiding judge or sheriff to determine.
- G. SCS should seek to provide services that allow the administrative business of the courts (submission of documents in civil cases, payment of fines etc.) to be undertaken without the need for physical attendance at a court or courthouse, particularly in respect of those parts of Scotland which are remote and where public transport provision is scarcer.
- H. Save where the exceptions provided in Article 6(1) of the ECHR apply, judgment should be pronounced publicly. It is important therefore that court buildings and court proceedings are publicly accessible and that the courts provide information about their work to communities or individuals with particular interest in given cases and to the public more generally.
- I. In providing the facilities for civil and criminal proceedings and in providing services to court users generally, the SCS must ensure that the accommodation or service is :
- I.i. fit for purpose;
 - I.ii. accessible, safe and secure; and
 - I.iii. consistent with future arrangements for expenditure of public funds.

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